credibility and, that being so, the decision of the learned Magistrate ought not to be interfered with. It may well be that it was purely a question of credibility. But if that is so, I am of the opinion that some attempt ought to have been made by the learned Magistrate in his judgment to analyse the evidence and it is hardly sufficient merely to say: "After considering the defence story I come to the conclusion that the accused has not rebutted the presumption placed on him".

For these reasons I am of the opinion, and I so hold, that this appeal should be allowed. The conviction is accordingly quashed and the sentence set aside.

Appeal allowed.

PUBLIC PROSECUTOR v. YIAP TAI JUAN & ORS.

[A. Cr. J. (Buhagiar J.) October 2, 1956]

[J. B. — Criminal Appeal No. 27 of 1956]

Criminal Trial — Procedure to be followed in the case of co-accused who pleaded guilty.

In this case the eleven respondents and two others were charged with gaming in a common gaming house. The eleven respondents pleaded guilty while the other two co-accused claimed trial. The learned Magistrate heard the evidence against the two accused and then acquitted them as he found there was no evidence that the players were playing "open poker", which was the game they were alleged to have been playing. The learned Magistrate then proceeded to acquit those who pleaded guilty. The Public Prosecutor appealed against the order of acquittal as regards the eleven respondents on the ground that the learned Magistrate was wrong in law in acquitting them after they had pleaded guilty to the charge.

Held: (1) on the plea of guilty, the learned Magistrate could either have accepted the plea and sentence the accused or he could have refused to accept the plea and heard the case against them;

(2) in this case the respondents should have been tried before they could be acquitted.

Case referred to:—

(1) *R. v. Payne* 34 Cr. App. R. 43.

MAGISTRATE'S CRIMINAL APPEAL.

Bahaudin bin Yaacob (Federal Counsel) for the appellant.

Respondents in person.

Buhagiar J.: — The eleven respondents were charged, together with two others, in that on the 28th May, 1956, at about 10.15 p.m. at house No. 13A Seelong New Village, in the District of Kulai, they were found gaming in a common gaming house, to wit, "open poker" and that they had thereby committed an offence punishable under section 6(1) of the Common Gaming House Ordinance 1953. The eleven appellants pleaded guilty while the other two co-accused claimed trial. There was evidence to show that a game of cards had been going on; there was also evidence to show the nature of the game "open poker" but there was no evidence that the players were playing "open poker". On this evidence the learned Magistrate acquitted and discharged the two accused who had claimed trial. He also proceeded to acquit those who had pleaded guilty.

The Public Prosecutor appealed against the order of acquittal as regards the present respondents on the ground that the learned Magistrate was wrong in law in acquitting them after they had pleaded guilty to the charge.

There is nothing on the record to show whether the learned Magistrate accepted or not the plea of guilty. If he had accepted the plea then he should have convicted and sentenced them — the procedure to be followed in the case of co-accused who pleaded guilty is laid down in *R. v. Payne*[1]. If he had not accepted the plea then there should be a note of this on the record and the reasons for not accepting the plea and furthermore on rejecting the plea of guilty that in effect would amount to a claim to be tried and the eleven respondents should have been tried before they could be acquitted or convicted. It does not appear that there was any such trial.

I was about to make an order remitting the case for retrial when the learned Deputy Public Prosecutor informed me that in view of the nature of the evidence adduced by the prosecution against the other two co-accused he proposed to withdraw the charge; I, therefore acquitted and discharged the respondents.

Order accordingly.